STIRBA & ASSOCIATES

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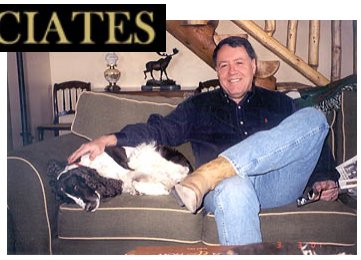
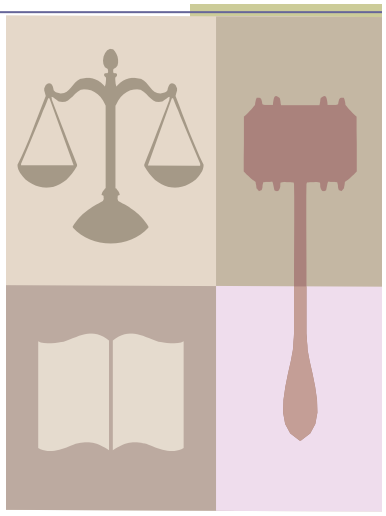


Qualified 'Qualified Immunity'

1

An Overview of Qualified Immunity

- Historical Perspective and Definition of Qualified Immunity
- Policy of Qualified Immunity
- Typical 1983 Claims
- Real Life Examples



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What is Qualified Immunity?

- A Privilege for state and local officials
- Affirmative Defense
- Granting immunity from lawsuits under certain conditions

3

Chisholm v. Georgia, 2 Dall. 419 (1793)

(holding no sovereign immunity for states).

- Sovereign Immunity was not explicitly incorporated into Constitutional text.
- The Supreme Court, in a 4 -1 decision, upheld its jurisdiction in a case where a South Carolina citizen sued the State of Georgia.
- Public reaction was fast and furious
- Congress began working on the Eleventh Amendment, the first constitutional amendment after the Bill of Rights.

4

Eleventh Amendment

(Ratified in 1798, just five years after Chisholm v. Georgia).

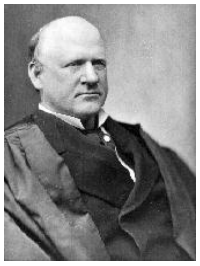
The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

5

Hans v. Louisiana, 134 U.S. 1 (1890)

(extending sovereign immunity to states).

- "[A] suit directly against a state by one of its own citizens is not one to which the judicial power of the United States extends, unless the state itself consents to be sued." Concurring with Justice Bradley



John Marshall Harlan

(1833-1911)

6

42 U.S.C.A. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . .

subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

7

Harlow v. Fitzgerald, 457 U.S. 800 (1982)

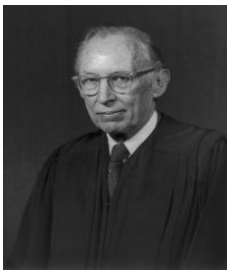
(defining the limits of qualified immunity).

- Discharge from employment in Department of Air Force.
- Presidential aides generally are entitled only to qualified immunity; [not absolute immunity]
- Presidential aides are entitled to application of qualified immunity standard that permits defeat of insubstantial claims without resort to trial; and
- On summary judgment, the judge appropriately may determine, not only the currently applicable law, but *whether that law was clearly established at the time an action occurred*.

8

Harlow v. Fitzgerald, 457 U.S. 800 (1982)
(defining policy).

- Reliance on the *objective reasonableness* of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment.



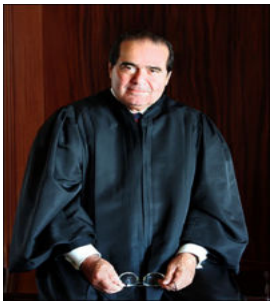
Justice Powell, Jr.

(1907 – 1998)

9

Anderson v. Creighton, 483 U.S. 635 (1987)
(establishing the objectively reasonable test).

- "[T]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."



Justice Scalia
(1936)

10

Sacramento v. Lewis, 523 U.S. 833 (1998).

- "High-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment"

Justice Souter

1939

11

Saucier v. Katz, 533 U.S. 194 (2001).

- The Two Prong Test:

1. Whether a defendant's conduct violated a federal constitutional or statutory right?

2. Whether the right was clearly established at the time of the conduct?

12

Brosseau v. Haugen, 125 S.Ct. 596 (2004).

- If the law at that time did not clearly establish that the [defendant's] conduct would violate the Constitution, the [defendant] should not be subject to liability or, indeed, even the burdens of litigation.

Justice Breyer (1938)

13

Brosseau v. Haugen, 125 S.Ct. 596 (2004).

- "[T]his inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition."
- When cases "show that . . . the result of a case depends very much on the facts. . . [unless there is a case directly on point, it] by no means clearly establish[es] that [a defendant's conduct violate[s a constitutional or statutory right.]

14

Balancing the Competing Interests of Qualified Immunity

Citizens' Constitutional Guarantees

Efficient Government

15

The Competing Interests of Qualified Immunity

16

Typical § 1983 Claims

Law Enforcement

Violations of the Fourth Amendment

- Wrongful Arrests
- Illegal Search and Seizures
- Excessive Force
- Selective Prosecution

17

Typical § 1983 Claims

Prisoners

Violations of the Eight Amendment

- Limited to violations of Cruel and Unusual Punishment

18

Typical § 1983 Claims

Land Use

Violations of Due Process

Improper Use of Eminent Domain

Unconstitutional Ordinances

19

Typical § 1983 Claims

Speech/Religion

Violations of the First Amendment

Ten Commandment Cases

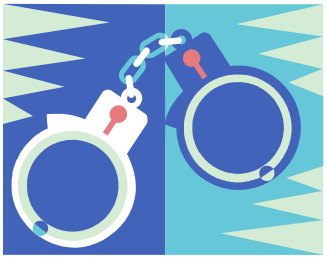
Prayer Before Council Meetings

Crosses on the Sides of the Roads

20

Real Life § 1983 Claims

- Snyder v. Cache County, 18 Fed. Appx. 693 (10th Cir. 2005).



Officers had reasonable belief that they had probable cause to make arrest for violation of protective order, *even if they misinterpreted the order.*

21

Real Life § 1983 Claims

- Phillips v. James, 422 F.3d 1075 (10th Cir. 2005).

Officer's use of deadly force in shooting suspect was justified under the Fourth Amendment.

22

Real Life § 1983 Claims

- Johnson v. Lindon City Corp., 405 F.3d 1065 (10th Cir. 2005).

Probable cause for arrest exists if facts and circumstances within arresting officer's knowledge of which he or she has reasonably trustworthy information are sufficient to lead a prudent person to believe that arrestee has committed or is committing an offense.

23

Real Life § 1983 Claims

- Walker v. City of Orem, 451 F.3d 1139 (10th Cir. 2006).

Constitutional rights of witnesses to a police shooting to not be detained for 90 minutes following the shooting was not clearly established, entitling police officers who detained the witnesses to qualified immunity in unlawful detention claim.

However, genuine issues of material fact existed as to whether suspect's Fourth Amendment right to be free excessive force precluded summary judgment for officers.

24

Real Life § 1983 Claims

- Callahan v. Millard County, 2006 WL 1409130 (D. Utah 2006).

Police entry into the home was justified under the consent-once-removed doctrine. Because the legal doctrine possibly justified the officers' actions, they did not violate clearly-established Fourth Amendment rights and they were entitled to qualified immunity.

25

Real Life § 1983 Claims

- Fuerschbach v. Southwest Airlines Co., 439 F.3d 1197 (10th Cir. 2006).

Officers were not entitled to qualified immunity for their alleged actions in carrying out prank.

Officers did not have good faith defense to false imprisonment or false arrest claim.

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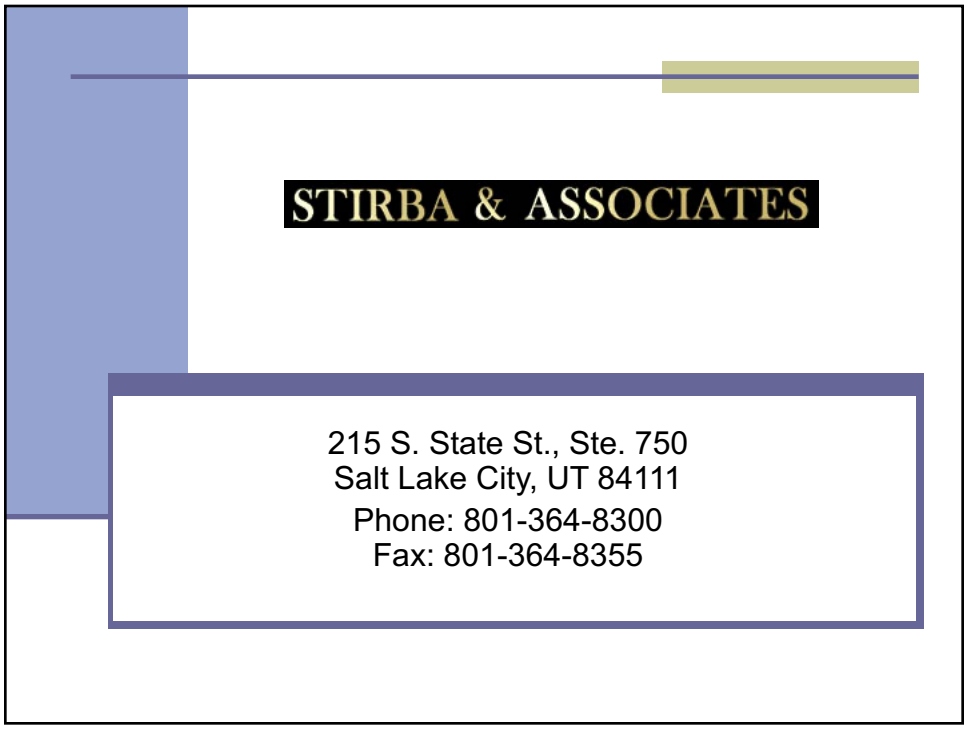
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27